

ASSEMBLY BILL

No. 1589

Introduced by Committee on Accountability and Administrative Review (De La Torre (Chair), Audra Strickland (Vice Chair), Arambula, Tom Berryhill, Block, Caballero, Emmerson, Fuentes, Hagman, Huber, Jones, Krekorian, Bonnie Lowenthal, and V. Manuel Perez)

September 12, 2009

An act to amend Section 4905 of, to add Section 4639.3 to, and to add Division 4.8 (commencing with Section 4910) to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1589, as introduced, Committee on Accountability and Administrative Review. Regional centers: whistleblower protection: related-party transactions.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental disabilities and their families, including, but not limited to, residential placement, and sets forth the duties of the regional centers, including, but not limited to, development of individual program plans, the purchase of needed services to implement the plan, and the monitoring of services. The act prohibits an employee or agent of a facility or program from subjecting a person with developmental disabilities to reprisal or harassment that would prevent the person, his or her legally authorized representative, or family member from reporting to the protection and advocacy agency designated by the Governor information

pertaining to suspected abuse, neglect, or other violations of the person's rights.

This bill would extend that prohibition to any person.

Existing law authorizes the department to adopt and enforce conflict-of-interest regulations to ensure that members of the governing board, program policy committees, and employees of regional centers make decisions that are in the best interest of consumers and the families of consumers.

This bill would require a regional center to disclose on its Internet Web site specified information regarding related-party transactions, as defined, on a quarterly basis, keep a log of that information for a period of 3 years after termination of the regional center contract, and provide that information to the public upon request.

Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would enact the Regional Center Whistleblower Protection Act providing similar protections for regional center employees who report improper regional center activities, as defined, or make a protected disclosure, as defined, to the department or the Legislature. The bill would establish a private cause of action to enforce these provisions and would make certain acts of reprisal a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4639.3 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4639.3. (a) For purposes of this section, the following terms
- 4 shall have the following meanings:

1 (1) A “related person” means a person who was in any of the
2 following categories at a time during the specified period for which
3 disclosure is required pursuant to subdivision (b):

4 (A) A director or officer of the regional center.

5 (B) A nominee for director.

6 (C) An immediate family member of a director or officer of the
7 regional center or any nominee for director, which means a child,
8 stepchild, parent, stepparent, spouse, sibling, mother-in-law,
9 father-in-law, son-in-law, daughter-in-law, brother-in-law, or
10 sister-in-law of the director, officer or director nominee, and a
11 person, other than a tenant or employee, sharing the household of
12 the director, officer, or director nominee.

13 (2) A “transaction” includes, but is not limited to, a financial
14 transaction, arrangement or relationship, including an indebtedness
15 or guarantee of indebtedness, or a series of similar transactions,
16 arrangements, or relationships.

17 (3) A “related-person transaction” means a transaction in which
18 the regional center was or is to be a participant and in which a
19 related person had or will have a direct or indirect material interest.

20 (b) Within 30 days following the last day of each of its fiscal
21 quarters, a regional center shall disclose on its Internet Web site
22 the following information, regarding each related-person
23 transaction that occurred during that quarter:

24 (1) The name of the related person and the basis on which the
25 person is a related person.

26 (2) The related person’s interest in the transaction with the
27 regional center, including the related person’s position or
28 relationship with, or ownership in, a firm, corporation, or other
29 entity that is a party to, or has an interest in, the transaction.

30 (3) The approximate dollar value of the amount involved in the
31 transaction.

32 (4) The approximate dollar value of the related person’s interest
33 in the transaction, which shall be computed without regard to the
34 amount of profit or loss.

35 (5) In the case of indebtedness, disclosure of the amount
36 involved in the transaction shall include the largest aggregate
37 amount of principal outstanding during the period for which
38 disclosure is provided, the amount outstanding as of the latest
39 practicable date, the amount of principal paid during the quarter,

1 the amount of interest paid during the quarter, and the rate or
2 amount of interest payable on the indebtedness.

3 (6) Any other information regarding the transaction or the related
4 person in the context of the transaction that is material to the public
5 in light of the circumstances of the particular transaction.

6 (c) The department shall post a link to each regional center's
7 disclosure information pursuant to subdivision (b) on the
8 department's Internet Web Site.

9 (d) The information set forth in subdivision (b) shall remain on
10 the regional center's Internet Web site for a 12-month period. The
11 regional center shall keep a log of the quarterly disclosures required
12 pursuant to subdivision (b) for a period of three years after the
13 regional center contract has terminated and shall make the
14 information available upon request to a member of the public.

15 (e) It is the intent of the Legislature that no additional state funds
16 be appropriated for the purposes of this section and that these
17 activities be funded through existing regional center administrative
18 resources.

19 SEC. 2. Section 4905 of the Welfare and Institutions Code is
20 amended to read:

21 4905. (a) No employee or agent of a facility, program, or
22 service shall subject a person ~~with a disability~~ to reprisal or
23 harassment or directly or indirectly take or threaten to take ~~any~~ *an*
24 action that would prevent the person, his or her legally authorized
25 representative, or family member from reporting or otherwise
26 bringing to the attention of the protection and advocacy agency *or*
27 *an entity having oversight jurisdiction over a regional center* ~~any~~
28 *the facts or information relative to suspected abuse, neglect, or*
29 *other violations of the person's any consumer's rights.*

30 (b) ~~Any~~ *An* attempt to involuntarily remove from a facility,
31 program, or service, or to deny privileges or rights without good
32 cause to a ~~person with a disability~~ *consumer* by whom or for whom
33 a complaint has been made to the protection and advocacy agency
34 *or any entity having oversight jurisdiction over a regional center,*
35 within 60 days after the date the complaint is made or within 60
36 days after the conclusion of ~~any~~ *a* proceeding resulting from the
37 complaint, shall raise a presumption that the action was taken in
38 retaliation for the filing of the complaint.

39 SEC. 3. Division 4.8 (commencing with Section 4910) is added
40 to the Welfare and Institutions Code, to read:

DIVISION 4.8. REGIONAL CENTER WHISTLEBLOWER
PROTECTION ACT

4910. This division shall be known and may be cited as the
“Regional Center Whistleblower Protection Act.”

4911. For purposes of this division:

(a) “Employee” means an individual employed with, holding
office in, or serving as a governing board member of, a regional
center as described by Article 1 (commencing with Section 4620)
of Chapter 5 of Division 4.5.

(b) “Illegal order” means a directive to violate or assist in
violating a federal, state, or local law, rule, or regulation or an
order to work or cause others to work in conditions outside of their
line of duty that would unreasonably threaten the health or safety
of employees or the public.

(c) “Improper regional center activity” means an activity by a
regional center or by an employee that is undertaken in the
performance of the employee’s official duties, whether or not that
action is within the scope of his or her employment, and that (1)
is in violation of a state or federal law or regulation, including, but
not limited to, corruption, malfeasance, bribery, theft of
government property, fraudulent claims, fraud, coercion,
conversion, malicious prosecution, misuse of government property,
or willful omission to perform duty, or (2) is economically
wasteful, or involves gross misconduct, incompetency, or
inefficiency. The intentional failure of a regional center to comply
with any provision of this division shall constitute an improper
regional center activity for purposes of this division.

(d) “Person” means an individual, corporation, partnership,
limited liability company, trust, association, a state or local
government, or an agency or instrumentality of any of the
foregoing.

(e) “Protected disclosure” means a good faith communication
that discloses or demonstrates an intention to disclose to the
department or the Legislature information that may evidence (1)
an improper regional center activity or (2) a condition that may
significantly threaten the health or safety of employees or the
public if the disclosure or intention to disclose was made for the
purpose of remedying that condition.

1 4912. (a) An employee may not directly or indirectly use or
2 attempt to use the official authority or influence of the employee
3 for the purpose of intimidating, threatening, coercing, commanding,
4 or attempting to intimidate, threaten, coerce, or command any
5 person for the purpose of interfering with the rights conferred
6 pursuant to this division.

7 (b) For the purpose of subdivision (a), “use the official authority
8 or influence” includes promising to confer, or conferring, a benefit;
9 effecting, or threatening to effect, a reprisal; or taking, or directing
10 others to take, or recommending, processing, or approving, a
11 personnel action, including, but not limited to, appointment,
12 promotion, transfer, assignment, performance evaluation,
13 suspension, or other disciplinary action.

14 (c) An employee who violates subdivision (a) may be liable in
15 an action for civil damages brought against the employee by the
16 offended party.

17 (d) Nothing in this section shall be construed to authorize an
18 individual to disclose information otherwise prohibited by or under
19 law.

20 4913. (a) Except as expressly set forth in this division, the
21 department shall administer this division, shall investigate, and
22 shall report as set forth in this section, regarding improper regional
23 center activities.

24 (b) Upon receiving specific information that improper regional
25 center activity has occurred, the department shall investigate and
26 may, if necessary, conduct a full investigative audit of the matter.
27 The identity of the person providing the information that initiated
28 the investigation shall not be disclosed without the written
29 permission of the person providing the information unless the
30 disclosure is to a law enforcement agency that is conducting a
31 criminal investigation.

32 (c) If the department determines that there is reasonable cause
33 to believe that improper regional center activity has occurred, the
34 department shall report the nature and details of the activity to the
35 regional center director.

36 (d) If, after investigating, the department finds that improper
37 regional center activities have occurred, the department shall send
38 a copy of the investigative report to the regional center. Within 30
39 days after receiving a copy of the department’s investigative report,
40 the regional center shall either serve a notice of adverse action

1 upon the employee who is the subject of the investigative report
2 or set forth in writing its reasons for not taking adverse action. The
3 regional center shall submit a copy of the notice of adverse action
4 to the department. If the regional center does not take adverse
5 action, it shall submit its written reasons for not doing so to the
6 department.

7 (e) If appropriate, the department shall report this information
8 to the Attorney General, the policy committees of the Senate and
9 Assembly having jurisdiction over the subject involved, and to
10 another authority that the department determines appropriate.

11 4915. The department may request the assistance of a state
12 department, agency, or employee in conducting an investigative
13 audit required by this division. No information obtained from the
14 department, agency, or employee as a result of the department's
15 request for assistance, nor any information obtained thereafter as
16 a result of further investigation, shall be divulged or made known
17 to a person without the prior approval of the department.

18 4916. (a) In a case in which the department submits a report
19 of alleged improper regional center activity to the regional center
20 director, the regional center director shall report to the department
21 with respect to the action taken by the individual regarding the
22 activity, the first report being transmitted within 30 days after the
23 date of the department's report and monthly thereafter until final
24 action has been taken.

25 (b) Every investigation shall be kept confidential, except that
26 the department shall issue a report of an investigation that has been
27 substantiated, keeping confidential the identity of the individual
28 or individuals involved, and shall release the findings resulting
29 from an investigation conducted pursuant to this division that is
30 deemed necessary to serve the interests of the state. Information
31 provided to the department, or by the department, pursuant to this
32 division is exempt from the prohibitions of Sections 4514 and
33 5328.

34 (c) Notwithstanding law, including, but not limited, to Section
35 4915, this division shall not limit the authority conferred upon the
36 Attorney General or a department or agency of government to
37 investigate any matter.

38 4917. (a) An employee or applicant for regional center
39 employment who files a written complaint with his or her
40 supervisor, manager, or the regional center alleging actual or

1 attempted acts of reprisal, retaliation, threats, coercion, or similar
2 improper acts prohibited by this division, may also file a copy of
3 the written complaint with the department, together with a sworn
4 statement that the contents of the written complaint are true, or are
5 believed by the affiant to be true, under penalty of perjury. The
6 complaint filed with the department, shall be filed within 12 months
7 of the most recent act of reprisal complained about.

8 (b) A person who intentionally engages in acts of reprisal,
9 retaliation, threats, coercion, or similar acts against an employee
10 or applicant for regional center employment for having made a
11 protected disclosure, is subject to a fine not to exceed ten thousand
12 dollars (\$10,000) and imprisonment in the county jail for a period
13 not to exceed one year.

14 (c) In addition to all other penalties provided by law, a person
15 who intentionally engages in acts of reprisal, retaliation, threats,
16 coercion, or similar acts against an employee or applicant for
17 regional center employment for having made a protected disclosure
18 shall be liable in an action for damages brought against him or her
19 by the injured party. Punitive damages may be awarded by the
20 court where the acts of the offending party are proven to be
21 malicious. Where liability has been established, the injured party
22 shall also be entitled to reasonable attorney's fees as provided by
23 law. However, an action for damages shall not be available to the
24 injured party unless the injured party has first filed a complaint
25 with the department pursuant to subdivision (a), and the department
26 has issued, or failed to issue, findings.

27 (d) This section is not intended to prevent a regional center,
28 manager, or supervisor from taking, directing others to take,
29 recommending, or approving a personnel action or from taking or
30 failing to take a personnel action with respect to an employee or
31 applicant for regional center employment if the regional center,
32 manager, or supervisor reasonably believes the action or inaction
33 is justified on the basis of evidence separate and apart from the
34 fact that the person has made a protected disclosure.

35 (e) In a civil action or administrative proceeding, once it has
36 been demonstrated by a preponderance of evidence that an activity
37 protected by this division was a contributing factor in the alleged
38 retaliation against a former, current, or prospective employee, the
39 burden of proof shall be on the supervisor, manager, or regional
40 center to demonstrate by clear and convincing evidence that the

1 alleged action would have occurred for legitimate, independent
2 reasons even if the employee had not engaged in protected
3 disclosures or refused an illegal order. If the supervisor, manager,
4 or regional center fails to meet this burden of proof in an adverse
5 action against the employee in an administrative review, challenge,
6 or adjudication in which retaliation has been demonstrated to be
7 a contributing factor, the employee shall have a complete
8 affirmative defense in the adverse action.

9 (f) Nothing in this division shall be deemed to diminish the
10 rights, privileges, or remedies of an employee under any other
11 federal or state law or under any employment contract or collective
12 bargaining agreement.

13 4918. By April 1, 2010, the department shall prepare for
14 employees a written explanation of the provisions of this division
15 and Division 4.7 (commencing with Section 4900). The explanation
16 shall include, but need not be limited to, all of the following
17 information:

18 (a) Instructions on how to contact the department by mail,
19 telephone, e-mail, and fax.

20 (b) A general overview of improper regional center activities
21 and examples of three of the most common types of improper
22 regional center activities that may be reported to the department.

23 (c) An explanation of whistleblower protection available to
24 employees who report improper regional center activities to the
25 department.

26 (d) The requirement that the department protect the anonymity
27 of a person who reports improper regional center activity to the
28 department.

29 (e) The department's authority in connection with violations of
30 law discovered during an investigation of improper regional center
31 activities.

32 (f) A description of the penalties imposed under Section 4917.

33 4919. (a) The department shall prepare for distribution to each
34 regional center in an electronic format a notice containing the
35 information in the written explanation prepared pursuant to Section
36 4918. By July 1, 2010, each regional center shall print and post
37 this notice at its office or offices in a location or locations where
38 employee notices are maintained. A regional center shall not edit
39 the written text of the notice but it may publish the notice in a
40 manner it chooses, and it may include its own introductory

1 language in the notice, provided that the language and the format
2 selected do not alter the meaning of the notice.

3 (b) On July 1, 2010, and annually thereafter, every regional
4 center shall send the information contained in the notice by
5 electronic mail to its employees who have authorized access to
6 electronic mail from the regional center.

7 (c) The department shall post the information described in
8 Section 4918 on its Internet Web site.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.